

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

CHRISTOPHER GUTH
SENIOR VICE PRESIDENT, POLICY
GLOBAL ENERGY INSTITUTE
U.S. CHAMBER OF COMMERCE

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5310

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VIA ELECTRONIC FILING

Mr. Leif Hockstad
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, Washington, DC 20460

RE: EPA proposal rescinding the Final Rule on Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process, May 14, 2021 [EPA-HQ-OAR-2020-0044]

Dear Mr. Hockstad:

The United States Chamber of Commerce appreciates the opportunity to provide comment on EPA's proposed rescission of the 2020 final rule on increasing consistency and transparency in considering benefits and costs in Clean Air Act regulatory processes.

High quality cost-benefit analyses are foundational to balanced and informed regulatory decision-making. Americans deserve a regulatory system that will fairly and transparently evaluate the impacts of agency regulations on our communities and businesses. As an agency responsible for regulating a broad range of manufacturing and industrial activities across the U.S. economy, improving cost-benefit processes at EPA is a worthy goal that will increase stakeholder and public trust in the agency's work.

In this proposal, EPA has concluded that the 2020 rulemaking should be rescinded in its entirety, arguing that the pre-existing administrative process provided ample consistency and transparency. The Chamber disagrees, and believes that the need for a more systematic and transparent approach to undertaking benefit-cost analyses (BCAs) is clear and well-established.

We recognize and appreciate that priorities and approaches with respect to the conduct of BCAs will vary across administrations. However, opportunities exist to institute and standardize best practices and procedures that are broadly recognized as enhancing the quality of BCAs. Accordingly, instead of repealing the rule in its entirety, the Chamber urges the agency to

consider the provisions of the rule on an individual basis, and to seek broader public comment on ways to enhance transparency and consistency in the agency’s approach to benefit-cost analysis.

First, it should be emphasized that the process of developing benefit-cost analyses (BCAs) is not easy. Forecasting both costs and benefits requires regulators to make a litany of assumptions, many of them subjective and uncertain, that become increasingly difficult to accurately estimate the farther they project into the future. This is true across government agencies, but at EPA, the need to make difficult assumptions on market, technological, and risk factors adds several layers of complexity. For example, EPA’s risk assessment practices, that are recognized for their highly conservative and somewhat controversial nature, are further impacted by uncertainty, allowing for a range of plausible and health protective risk management decisions. These challenges cannot be eliminated, but they can be managed and made transparent, and in doing so, provide valuable insight to inform decision-makers’ judgments on rules. To this end, there should be little question regarding the value of a consistent, transparent, and standardized approach to the conduct of BCAs as a tool to inform and guide regulatory decision-making.

In the proposed repeal, EPA suggests there is insufficient evidence that “an actual or theoretical problem exists” with respect to the agency’s conduct of BCAs. However, the record of prior cost-benefit analyses includes inconsistent approaches, problematic and/or non-transparent assumptions, and a failure to acknowledge and communicate significant sources of uncertainty—points that have been previously established. These are detailed in prior comments filed by the Chamber individually and in conjunction with industry partners.¹

With this in mind, we call particular attention to the following set of best practices, which we believe should be standard agency requirements for the conduct of BCAs:

- Thorough and upfront description of how benefits and costs were estimated, including an explanation of key assumptions concerning the models and data used, and the evaluation and selection process for these decisions.
- Codification of best practices in the conduct and presentation of BCAs for better transparency. This should include disaggregation of social benefits attributable to the targeted statutory provisions underlying the regulation, and other secondary or incidental benefits and welfare effects.
- Identification and analysis of potential model uncertainty and input sensitivities related to subjective assumptions, including the impact of such uncertainties and sensitivities on benefit/cost probability distributions. This must include recognizing and addressing the

¹ American Chemistry Council, American Petroleum Institute, National Association of Manufacturers, and U.S. Chamber of Commerce, Comment Letter on Proposed Rule Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process, 85 Fed. Reg. 35612 (June 11, 2020) <https://www.regulations.gov/comment/EPA-HQ-OAR-2020-0044-0617>

underlying uncertainties created by the assumptions EPA applies during the risk evaluation process that support many regulatory actions.

- Standardized communication of the plausible range of estimated regulatory costs and benefits associated with a specific rulemaking in the preamble and underlying regulatory impact analyses, as well as in agency fact sheets and regulatory marketing materials. This translation is important to ensure policymakers and the public are not misled by the understandable desire to simplify and summarize complex BCAs into a single set of “headline numbers.”

To summarize, the Chamber believes that, rather than repealing the rulemaking in its entirety, the agency should instead seek to revise it through thoughtful consideration of its individual provisions. This approach provides a better path to systematic and consistent agency application of the basic principles necessary for more complete and accurate accounting of benefits, costs, and associated uncertainties. Ultimately, this will not only help the agency strengthen regulatory decision-making, it will enhance public understanding of the inputs that inform those decisions, thereby improving the integrity of—and public trust in—the rulemaking process.

Thank you for the opportunity to present our views on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Guith", written in a cursive style.

Christopher Guith